IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 12TH APRIL 2007 / 22ND CHAITHRA 1929

Crl.MC.No. 1112 of 2007()

CRMP.705/2007 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KUNNAMKULAM
CRIME NO.54/07 OF PERAMANGALAM POLICE STATION

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PETITIONER:

ASOKAN C.V,S/O.VELAYUDHAN,CHITTILAPPILLY HOUSE,PONNORE DESOM,THOLOOR VILLAGE.

BY ADV. SRI.RAJIT

RESPONDENTS:

STATE OF KERALA REP.BY PUBLIC PROSEUTOR HIGH COURT OF KERALA ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1112 of 2007

Dated this the 12th day of April, 2007

ORDER

The petitioner's vehicle - a motor cycle, has been seized by the police alleging commission of an offence punishable under the provisions of the Kerala Abkari Act. The petitioner applied for release of the vehicle. The learned Magistrate by the impugned order, which reads as follows, rejected the said prayer.

> "1. This is an application filed by the petitioner under Section 451 Cr.P.C.
>
> 2. On perusal it is seen that the petitioner is the accused in this crime and offence alleged is U/s.55(a), 55 (1) of Abkari Act. The vehicle involved in the offence alleged. Hence at this stage, the vehicle could not be released and the same is dismissed."

The petitioner has come to this Court with a prayer that directions may be issued for release of the vehicle to the petitioner.

2. The learned Public Prosecutor was directed to take instructions. The learned Public Prosecutor submits that proceedings under Section 67 B of the Kerala Abkari Act for confiscation of the vehicle has been initiated already by the official of the Excise Department. Number, details etc. of any such proceedings are not furnished to the court. The learned counsel for the petitioner submits that he is unaware of any such proceedings. At any rate, there may

be a direction, subject to appropriate condition, to release the vehicle to the petitioner, as exposure of the vehicle to sun and rain during the period of ensuing vacation is likely to cause irreparable loss and prejudice to the petitioner, submits the learned counsel for the petitioner.

3. The learned Public Prosecutor submits that the State has no objection if the vehicle were directed to be released to the petitioner subject to appropriate safeguards, including the production of bank guarantee equal to the value of the vehicle in accordance with law. I am satisfied, that directions can be issued subject to conditions to release the vehicle to the petitioner.

4. In the result, this Crl.M.C is, allowed. The vehicle No.KL8-AH/8378 (motor cycle) seized by the police shall be released to the petitioner on the following terms and conditions.

i) The petitioner shall produce all documents before the learned Magistrate to show that he is the person owning the vehicle and entitled to possession thereof;

ii) The petitioner shall execute a bond for an amount equal to the value of the vehicle to be ascertained by the learned Magistrate, undertaking to produce the vehicle as and when directed by the court or by the authorised officer under Section 67 B of the Kerala Abkari Act.

iii) The petitioner shall furnish a bank guarantee for an amount equal to the value of the vehicle to the satisfaction of the learned Magistrate.

5. Hand over a copy of this order to the learned counsel for the petitioner today itself.

(R.BASANT, JUDGE)

rtr/-